

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter Of)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
_____)	

**REPLY COMMENTS OF THE
PUBLIC UTILITY DIVISION OF THE
OKLAHOMA CORPORATION COMMISSION**

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) respectfully submits the following reply comments in connection with the Public Notice released March 2, 2017¹ seeking comments on the Request for Reconsideration (“Request”)² of the Wireline Competition Bureau’s reconsideration of Lifeline Broadband Provider (“LBP”) designations.³

PUD filed comments in this matter on March 16, 2017. PUD’s comments were partially based on the experience PUD has had in Oklahoma with regard to the presence of waste, fraud, and abuse in the Lifeline program. In addition, PUD raised its continuing concerns with the questions of whether or not the FCC has the legal authority to issue the LBP Eligible

¹ *Public Notice* DA 17-213, rel. March 2, 2017.

² The request was made by Free Press, 18MillionRising.org, AFL-CIO, American Library Association, Appalshop, Inc., Asian Americans Advancing Justice – AAJC, Center for Media Justice, Center for Rural Strategies, Color of Change, Common Cause, Common Sense Kids Action, Communications Workers of America, Fight for the Future, FOOTPRINTS INC, Generation Justice, Global Action Project, human-I-T, Inclusive Technologies, Institute for Local Self-Reliance, Media Mobilizing Project, MetroEast Community Media, Mobile Beacon, Monterey County Office of Education, NAACP, National Consumer Law Center, National Digital Inclusion Alliance, National Hispanic Media Coalition, Native Public Media, New America’s Open Technology Institute, Open MIC, Partners Bridging the Digital Divide, Public Knowledge, SPNN, The Benton Foundation, The Greenlining Institute, United Church of Christ, OC Inc., and WinstonNet, Inc. (collectively, “Petitioners”)

³ *See, Telecommunications Carriers Eligible for Universal Service Support et al.*, Order on Reconsideration, WC Docket Nos. 09-197, 11-42, DA 17-128, released February 3, 2017 (*LBP Reconsideration Order*).

Telecommunications Carrier (“ETC”) designations at issue and what role states like Oklahoma will play in overseeing the operations of such entities within the state(s) in which they are designated.

I. Waste, Fraud, and Abuse in the Lifeline Program

Virtually all other parties filing comments urge the Federal Communications Commission (“FCC”) to rescind the Wireline Competition Bureau’s previous *LBP Reconsideration Order*.⁴ While PUD is cognizant of the importance of broadband service to everyone’s day-to-day activities, PUD continues to believe that concerns regarding waste, fraud, and abuse are far from a red herring⁵ and must be considered. PUD does agree that these concerns must be balanced with both the applicable rules and the public policy goals, but disagrees that there is either no relevant cost to the waste, fraud, and abuse or, alternatively, that to the extent there are costs, they should simply be absorbed by the Lifeline program or ignored all together.⁶ Given that the Lifeline program does not consist of limitless dollars, any loss of dollars to waste, fraud, and abuse necessarily means that those dollars are not available to advance the goals of the Lifeline program. Further, those lost dollars could not be available for other highly important public

⁴ See, *Opposition to Reconsideration Concerning Lifeline Broadband Providers*, Media Alliance, at page 2 (“We write today in full support of the Lifeline modernization reforms adopted in March of 2016 and ask you to set aside the Order for Reconsideration and fully implement the Commission’s previous order, which was well-considered and wise.”); *Comments of the Writers Guild of America, East, AFL-CIO*, at page 1 (“We respectfully submit that the Commission reverse the Bureau’s Order on Reconsideration that has undermined Lifeline’s important mission of bringing affordable and life-saving communications services to poor people.”); *Comments of the Consortium for School Networking, State Educational Technology Directors Association, Alliance for Excellent Education, and Common Sense Kids Action*, at page 4 (“For the reasons described above, CoSN, SETDA, the Alliance, and Common Sense urge the Commission to reconsider the Wireless Competition Bureau’s decision and restore the LBP designation previously granted to these nine companies.”)

⁵ See, *Opposition to Reconsideration Concerning Lifeline Broadband Providers*, Media Alliance, at page 4

⁶ *Id.*, at page 4, (“The overall costs to the society of the digital divide are far greater down the line than the modest costs of the subsidy, even absorbing some baseline level of duplicated services or modest fraud.”)

policy goals such as the E-Rate program.⁷ Accordingly, PUD believes that proactive efforts to identify potential, as well as real, instances of waste, fraud, and abuse are not only appropriate but necessary in order to advance and maintain the important public policy goals that underpin the inclusion of broadband internet access service (“BIAS”) as a supported service within the Lifeline program.

II. Designation of LBP ETCs

PUD continues to request that the FCC hold all pending LBP ETC designation petitions in abeyance pending the outcome of the United States Court of Appeals review⁸ of whether the FCC has authority to preempt the states and issue its own designations. PUD agrees with NARUC’s observation that “...Congress specified that 47 U.S.C. ‘Section 214(e)(2) of the Act provides state commissions with the *primary* responsibility for performing {Eligible Telecommunications Carrier} designations. (emphasis added)’”⁹ and would disagree with the intimation in some comments that states represent an unnecessary barrier to the LBP ETC designation process, and the specific allegation in the comments filed by The Consortium for School Networking, State Educational Technology Directors, Alliance for Excellent Education and Common Sense Kids Action that “Past practice and persistent service gaps show that states are not succeeding on their own in addressing the Homework Gap, especially in the places where low-income consumers are often most in need of Lifeline broadband support.” The Consortium

⁷ See, *Letter from Senators Edward J. Markey and Dan Sullivan to FCC Chairman Ajit Pai*, dated March 17, 2017 (“The E-Rate program is essential for providing internet connectivity to the nation’s schools and libraries. These institutions are vital outlets to connect all Americans, including millions of Americans in rural parts of the country. For many communities, these schools and libraries are the only source of free public internet access. We write to encourage you to support this vital source of funding that benefits children across America.”)

⁸ See, *National Association of Regulatory Utility Commissioners v. Federal Communications Commission and the United States of America* Case No. 16-1170 Petition for Review (filed June 3, 2016).

⁹ *Id.*, at page 3 citing *In the Matter of Fed.-State Joint Bd. On Universal Serv.*, 20 F.C.C. Rcd. 6371, 6374 ¶ 8 (Mar 17, 2005). (footnotes omitted)

for School Networking, *et al.* offer no specific support for this allegation nor do they identify any specific actions undertaken by Oklahoma or any other state in conjunction with the existing ETC designation process that impairs or otherwise unreasonably delays the grant of ETC designations or how such actions are causing any particular state to create service gaps.

PUD can understand that the idea of an automatic grant of an LBP ETC designation within 60 days of filing¹⁰ has appeal to an applicant, however, the reality is that all of the statutory and rule requirements for ETC designation continue to exist and must be addressed, whether in a 60 day, six month or longer time frame. Beyond the designation requirements in the statutes and rules, PUD does agree with the idea that consumers are better off with additional choices among providers however, the choices, in order to keep the focus on the best outcome for the consumer, must be among ETCs that comply with the rules and provide services that meet appropriate standards, which include operating in a manner that avoids waste, fraud, and abuse in the Lifeline program.

III. State Experience with ETC Designations to Support Federal Broadband Goals

Contrary to assertions that states are an impediment to the ETC designation process, PUD would offer that some states, such as Oklahoma, do have experience in granting ETC designations on an expedited basis in order to assist with federal broadband goals.¹¹ PUD and the Oklahoma Corporation Commission worked diligently to timely process various applications for ETC designation in Oklahoma for the purpose of qualifying to participate in the FCC's Rural

¹⁰ 47 C.F.R. § 54.202(d)(1)

¹¹ FCC *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, WC Docket No. 14-98, released July 14, 2014, ¶ 1 (“We finalize decisions to use on a limited scale Connect America funding for rural broadband experiments in price cap areas that will deploy new, robust broadband to consumers. This Report and Order (Order) establishes a budget for these experiments and an objective, clear cut methodology for selecting winning applications, building on the record from the *Tech Transitions FNPRM*.” (footnote omitted))

Broadband Experiment (“RBE”) fund. This was done via an expedited process in order to assist the applicants in meeting the deadlines mandated by the FCC’s post selection review process in which they needed to document their completed ETC designation status.

In processing these applications for ETC designation, PUD, even though working on an expedited schedule, applied all the relevant rules and requirements but, in doing so, did rely on information the applicant submitted to the FCC during their application process to be considered for participation in the Rural Broadband Experiment Fund. For instance, applicants were able to satisfy the requirement to provide a five-year plan in accordance with 47 C.F.R. § 54.202(a)(1)(ii) by providing PUD access to review the applicant’s technology description, network diagrams and build out plans that had been submitted to the FCC.

IV. Potential Expedited State Review of LBP ETC Designation Applications

PUD would suggest that, with adequate guidance and direction to applicants from the FCC, just as with the RBE based ETC designations, states like Oklahoma may be able to accomplish a review process that is both expedited and compliant with the existing rules and requirements. This could also result in a more standardized process that would “promote regulatory certainty.”¹²

For instance, were the FCC to process pending applications for LBP ETC designation in the federal jurisdiction states¹³ in a manner that provided guidelines as to how an applicant for LBP ETC designation is to demonstrate compliance with all of the ETC designation requirements,¹⁴ states could utilize such decisions and information in guiding their own

¹² See, *Comments of Lifeline Connects Coalition*, filed March 16, 2017, at page 2.

¹³ See, *Id.*, at page 3, See also, *Comments of Q Link Wireless, LLC*, filed March 16, 2017, at page 1.

¹⁴ Under current rules, PUD does not see any difference between the requirements for general ETC designation and those applicable to LBP ETC designation.

designation review processes. This would be similar to the previous provision of guidance by the FCC in the form of the *Virginia Cellular*¹⁵ and *Highland Cellular*¹⁶ ETC designation orders.

If the FCC is inclined to consider using its own processing of LBP ETC designation petitions within the federal jurisdiction states as guidance for designating states, PUD believes there are some specific requirements that must be thoroughly addressed in order for any such FCC designation to be a useful and effective “template” upon which states could rely in reviewing LBP ETC designation applications. First, the FCC should require applicants to define their proposed service areas in a manner consistent with 47 U.S.C. §§ 214(e)(5) and 214(e)(6).¹⁷ Second, such designations by the FCC must also address the public interest finding that is required in conjunction with the designation of an ETC within a rural service area.¹⁸ This is particularly important to the processing timeline as it is this public interest finding that can involve a contested hearing if a rural telephone company intervenes. With clear guidance on these two significant requirements, in conjunction with the other general requirements, applicants would be able to prepare complete and thorough applications that, in turn, could facilitate an expedited review and designation process by the state(s). PUD, based on its experience with RBE based ETC designation applications, believes an expedited process for LBP ETC designations, assuming adequate FCC guidance on applicable rules and complete

¹⁵ FCC Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338, released January 22, 2004

¹⁶ FCC Memorandum Opinion and Order, CC Docket No. 96-45, FCC 04-37, released April 12, 2004

¹⁷ See, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of SHOIT, Inc. for Designation as a Lifeline Broadband Provider*, filed February 5, 2017, beginning at page 10 (“III. Service Area Requirements”)

¹⁸ See, *Memorandum Opinion and Order*, WC Docket Nos. 09-197, 11-42, released April 15, 2013, ¶ 15, (“Designating authorities will continue to make an independent assessment as to whether designating a carrier as an ETC within a rural service area is in the public interest.”)

applications, could be accomplished in approximately 90 days,¹⁹ with a six month timeline being an exception reserved for only the most complex or challenging applications.

This process, in facilitating an expedited review by the states, would have the additional benefit of not bringing the FCC's authority to issue LBP ETC designations in the non-federal jurisdiction states into question. Additionally, the questions raised in the *Petition for Clarification of the Pennsylvania Public Utility Commission*, WC Docket Nos. 11-42, 09-197, and 10-90 (dated June 23, 2016) concerning compliance and enforcement responsibility would ostensibly be addressed as the ETC designation would be accomplished under 47 U.S.C. § 214(e)(2) rather than 47 U.S.C. § 214(e)(6).

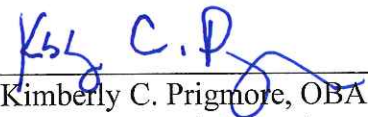
¹⁹ PUD recognizes that this estimate is 30 days longer than the 60 day automatic grant process option that is found at 47 C.F.R. § 54.202(d)(2) but believes the additional 30 days is required in order to achieve a meaningful review as well as to accommodate the administrative process in Oklahoma.

V. Conclusion

PUD continues to support the WCB's decision in its *LBP Reconsideration Order* to revoke the previously granted LBP ETC designations and return them to a pending status and does not support a reversal of this determination. At the same time, PUD recognizes the importance of broadband in the day-to-day lives of consumers and that there needs to be a balancing of interests that gets these important services into the hands of the eligible subscribers as efficiently and effectively as possible. However, such a balancing should not be accomplished by ignoring or otherwise accepting the presence of waste, fraud, and abuse in the Lifeline program. Waste, fraud, and abuse must be given real consideration in the LBP ETC designation process (as well as in the continuing oversight of the Lifeline program).

PUD believes that clear FCC action on LBP ETC applications in the federal jurisdiction states could provide important guidance to applicants and states like Oklahoma that could support an expedited review and designation process by the states in order to deliver additional effective choice to eligible consumers in a manner consistent with the ETC designation requirements as well as the public policy goals surrounding the inclusion of broadband as a supported service.

Respectfully submitted,



Kimberly C. Prigmore, OBA No. 21781
Deputy General Counsel
Oklahoma Corporation Commission
P.O. Box 52000
Oklahoma City, OK 73152-2000
Tel. (405) 522-1638
k.prigmore@occcemail.com